

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CAMI JO TICE-HAROUFF,

Plaintiff

v.

Case No. 6:22-cv-00201-JDK

CAROLE JOHNSON, *et al.*,

Defendants.

NOTICE

In their response to the Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction, the Defendants attached a declaration asserting that, *inter alia*, "[Fertility Awareness Based Methods of] instruction is included in the 2021 Guidelines, as part of contraceptive counseling and education. Pursuant to Section 2713 of the PHS Act, all preventive services included in the 2021 Guidelines are required to be covered by Subject Health Insurers, without cost-sharing." Dkt. 20 at Ex. A, ¶ 6.

The Defendants are filing this Notice to inform the Court and the Plaintiff that on July 18, 2022, the Health Resources & Services Administration (HRSA) added a footnote to the HRSA-supported Women's Preventive Services Guidelines (the Guidelines) for Contraception, available at HRSA's website (<https://www.hrsa.gov/womens-guidelines/index.html>), that clarifies that "[e]ducation and counseling includes all methods of contraception, including but not limited to, hormonal, devices, surgical, barrier, and *fertility-based awareness methods*, including lactation amenorrhea" (emphasis added). A copy of this page is included as Exhibit A to this Notice.

In addition, on or about July 28, 2022, the Center for Consumer Information and Insurance Oversight (CCIIO), one of the federal agencies tasked with implementing aspects of the Affordable

Care Act, including the requirements that insurers provide no cost coverage of services covered by the Guidelines, updated the “Frequently Asked Questions” (FAQs) section of its website (<https://www.cms.gov/files/document/faqs-part-54.pdf>). The FAQs include the following question and answer:

Q4: The currently applicable 2019 HRSA-Supported Guidelines recommend instruction in fertility awareness-based methods including the lactation amenorrhea method for women desiring an alternative method. Under the 2021 HRSA-Supported Guidelines, are plans and issuers required to continue to provide coverage for instruction in fertility awareness based methods without cost sharing?

Yes. The 2021 HRSA-Supported Guidelines include “screening, education, counseling, and provision of contraceptives (including in the immediate postpartum period).” Counseling and education under the 2021 HRSA-Supported Guidelines includes instruction in fertility awareness-based methods, including lactation amenorrhea.

A copy of the relevant section of these FAQs is included as Exhibit B to this Notice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August 2022, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

/s/ *James Gillingham*
JAMES GILLINGHAM